

**From:** richard  
**To:** Microsoft ATR  
**Date:** 1/23/02 6:35pm  
**Subject:** Microsoft Settlement

I am worried about the following provisions of the proposed final judgement:

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### III. Prohibited Conduct

A. Microsoft shall not retaliate against an OEM by altering Microsoft's commercial relations with that OEM, or by withholding newly introduced forms of non-monetary Consideration (including but not limited to new versions of existing forms of non-monetary Consideration) from that OEM, because it is known to Microsoft that the OEM is or is contemplating:

1.. developing, distributing, promoting, using, selling, or licensing any software that competes with Microsoft Platform Software or any product or service that distributes or promotes any Non-Microsoft Middleware;

2.. shipping a Personal Computer that (a) includes both a Windows Operating System Product and a non-Microsoft Operating System, or (b) will boot with more than one Operating System; or

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Specifically, the word 'retaliate' leaves some wiggle room for Microsoft and is not defined in the terms listed at the bottom of the PFJ. My Webster's Unabridged dictionary (1996) says that retaliate means "To return the like for; to repay or requite by an act of the same kind; ". Would, I don't know, buying the offending company, and firing everyone in it, be considered a retaliation, in the strict, dictionary sense of the word? Nope.

And that's how Microsoft will read it too. As long as they do something else bad, that is not 'an act of the same kind', they are free and clear to continue their monopolistic controls. This one word, really guts all of section III in regard to OEM's and ISV's (where retaliate is used again).

This is nitpicking. But this is Microsoft, and nitpicking is all I have.

Thank you for your time,  
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